97TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 97-423
Part 2

COAL PIPELINE ACT OF 1982

AUGUST 10, 1982.—Ordered to be printed

Mr. HOWARD, from the Committee on Public Works and Transportation, submitted the following

REPORT

together with

ADDITIONAL, MINORITY AND DISSENTING VIEWS

[To accompany H.R. 4230 which on July 22, 1981, was referred jointly to the Committee on Interior and Insular Affairs and the Committee on Public Works and Transportation]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 4230) to facilitate the transportation of coal by pipeline across Federal and non-Federal lands, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass. The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

GENERAL STATEMENT

The issue of whether or not coal slurry pipelines should be allowed to utilize the Federal power of eminent domain in order to secure rights-of-way is not a new one. In the 95th Congress, this Committee and the Committee on Interior and Insular Affairs both reported a bill H.R. 1609, The Coal Pipeline Act of 1978. Both Committees again reported legislation (H.R. 4370) dealing with coal slurry pipelines in the 96th Congress. In this Congress, the Committee on Interior and Insular Affairs reported H.R. 4230 on January 29, 1982 (Committee Report No. 97-423, Pt. I).

H.R. 4230, as reported by this Committee and the Committee on Interior and Insular Affairs, retains the Interstate Commerce Commission as the principal government agency in the certification

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process and retains the Department of Transportation as the regulator of all safety aspects of coal pipelines. H.R. 4230, as reported by this Committee improves upon prior legislative efforts by clearly defining the pipeline's obligation to shippers where the pipeline elects to provide service pursuant to contracts and by establishing statutory guidelines for such contracts.

Now, there is only one coal slurry pipeline in operation. It is the Black Mesa Pipeline; that pipeline runs 273 miles from the Black Mesa Mine on Navajo land in northeastern Arizona to the Mojave Power Plant in southern Nevada. The Black Mesa pipeline has a capacity of 4.8 million tons of coal per year. It is owned by the Southern Pacific Company. The first large-scale coal pipeline project in this country operated for seven years between Cadiz, Ohio, and a power plant 108 miles north on Lake Erie east of Cleveland, Ohio. In direct response to the competition which this pioneer pipeline afforded, the Pennsylvania Railroad introduced the unit coal train concept into the market, and the pipeline carrier ceased operations. The following figure shows pipelines in existence and those planned.

U.S. COAL SLURRY PIPELINE SYSTEM

Pipeline System	Length (Miles)	Annual Capacity (Tons)
1. Black Mesa	273	4,800,000
2. Allen-Warner Valley	183	11,600,000
3. Pacific Bulk	650	10,000,000
4. NICES*	1,100	25,000,000
5. San Marco	900	10,000,000
6. Texas Eastern	1,260	22,000,000
7. ETSI	1,387	25,000,000
8. Coalstream	1,500	25-50,000,000
9. VEPCO	350	5,000,000
10. Ohio	108	1,300,000
11. Powder River	To Be Determined	To Be Determined

*Northwest Integrated Coal Energy System

The technology of slurry pipeline consists of grinding the coal or other material into a powder-like substance and mixing it with water, in almost equal portions. The slurry is stored in tanks with mechanical agitators to prevent settling.

Subsequently, it is transported through the pipeline at a velocity of about 6 feet per second. Pumping stations are required. At the end of the pipeline, the slurry is removed from the pipeline and stored in tanks or ponds. The slurry is transferred into a dewatering facility. Then, the coal is dried, stored, and transported further by other modes, or burned directly for thermal electric generation. Research is continuing on the use of substances other than water as media for the movement of coal via pipeline.

The Committee faced several major questions when it began its deliberation of H.R. 4230. One question was whether or not the need for coal slurry pipelines justified the delegation of the Federal power of eminent domain. The Committee's response was positive because the Committee concluded that the construction of pipelines to transport coal is a beneficial use that justifies delegating the power of eminent domain to coal pipelines that have complied with the certification process established in the bill.

The second question faced by the Committee was which government agency should control the issuance of certificates that carry with them a conditioned right to exercise the Federal power of eminent domain. The Committee's resolution conformed to previous determinations on this issue by placing this authority in the Interstate Commerce Commission. Again this decision was premised on the fact that the Commission has broad expertise in transportation matters, particularly in economic regulation of surface transportation carriers. The Committee believes that the Commission as regulator of the pipelines' chief competitor, the railroads, is better able to assess the transportation issues for which consideration is mandated in the certification process. Another advantage is that the Commission has the expertise to carry out the new contract provision and to enforce the pipeline carrier obligation imposed by the bill.

Another question was whether or not coal pipelines should be given explicit authority to enter into contracts for their transportation services. The bill as reported by the Committee establishes that coal pipelines may enter into contracts for their transportation services and establishes statutory guidelines for those contracts. Other transporters of coal may enter into contracts for their transportation services; hence, conferring upon the pipelines the same ability permits the pipelines to compete with other modes in a similar manner. Moreover, the authority removes any statutory cloud with respect to the pipelines' ability to enter into such contracts, and clarifies the manner is which they may be entered into.

Having resolved this question, the Committee was faced with the question as to how to impose an obligation upon the pipelines to provide service where the pipeline elects to provide service pursuant to contracts. The Committee answered the question by adopting a mechanism that imposes certain types of service obligations which are enforceable for original supporters, a term defined in section 10959 and for other shippers. Under that mechanism, the original supporters and other shippers can force the pipeline to

provide service. Here, it should be noted that pipelines not electing to provide contract service are subject to existing law; that is, they would be subject to the rate and services provision in Title 49 of the United States Code that now apply to pipelines.

Another question was how the pipelines could be certificated in a manner that would not impair other modes of transportation that rely upon the transportation of coal for their economic success or survival. The bill establishes a regulatory framework in which the impacts on competing modes of transportation can be assessed by the Interstate Commerce Commission before the Commission issues a certificate of public convenience and necessity. Moreover, the determination must be on a case-by-case basis and would balance the need for such transportation and its effect on competing modes of transportation.

The last major question addressed by the Committee was how coal slurry pipelines could be constructed without affecting the authority of the states to regulate water. The Committee's bill explicitly retains the authority of the states to regulate their water resources. This intent is made abundantly clear in section 5 and section 10. Moreover, subsection 10(b) establishes the States' power to condition water permits or authorizations. This conditioning power is delegated by the Congress pursuant to its power under the Commerce Clause in article I, section 8 of the United States Constitution.

The provisions in these sections were debated at length. As indicated in the section-by-section analysis, the Committee on Interior and Insular Affairs Report on H.R. 4230 (H.R. Report No. 423, Part I, 97th Cong., 2d Sess. (1982)) was reviewed and this Committee concurs with the views expressed by that Committee on States' water rights. Since that Report was issued, however, the Supreme Court of the United States issued its decision in *sporhase* v. *Nebraska,* 50 U.S.L.W. 5115 (July 2, 1982). The immediate question raised was how the decision in that case relates to the provisions in H.R. 4230 dealing with States' water rights.

In the *Sporhase* case, two individuals, Sporhase and Moss, jointly own contiguous tracts of land in Nebraska and Colorado, and irrigated these tracts with ground water pumped from a well located on the Nebraska tract of land. The State of Nebraska sued the landowners for violating a Nebraska law prohibiting the export of water to another State without a permit. The conditions for obtaining such a permit under Nebraska law are:

> Any person, firm, city, village, municipal corporation or any other entity intending to withdraw ground water from any well or pit located in the State of Nebraska and transport it for use in an adjoining state shall apply to the Department of Water Resources for a permit to do so. If the Director of Water Resources finds that the withdrawal of the ground water requested is *reasonable, is not contrary to the conservation and use of ground water,* he shall grant the permit *if the state in which the water is to be used grants reciprocal rights* to withdraw and transport ground water from that state for use in the State of Nebraska.

> Sec. 46-613.01 of the Nebraska Revised Statutes (emphasis added).

The State prevailed in the Nebraska Supreme Court. The decision was appealed to the United States Supreme Court. In reaching its decision, the Supreme Court began by stating that water is an article of commerce and therefore subject to the Commerce Clause. It then reviewed the Nebraska law in the context of the traditional Commerce Clause analysis.

The Court called Nebraska's interest in conserving and preserving diminishing sources of ground water "unquestionably legitimate and highly important." The Court reiterated its view that the interests of the Western States in their water convincingly demonstrate the desirability of State and local management of ground water and the concomitant Federal deference to State water law.

Thus, the requirements in the Nebraska law "that the withdrawal of ground water is reasonable, is not contrary to the conservation and use of ground water, and is not detrimental to the public welfare" are legitimate interests and justify the disparate treatment of requests to export water. (No permit is required if the water is to be used in Nebraska.)

However, in the decision the Court found that Nebraska did not attempt to prove that the reciprocity requirement contained in its statute furthered its conservation and preservation interest, and the Court struck that requirement down as an impermissible burden on interstate commerce.

The Court also addressed the power of Congress to authorize States to pass laws regulating interstate commerce which, absent the Congressional authorization, would impermissibly burden commerce in violation of the Commerce Clause. As an example, it cites the Reclamation Act of 1902 in which Congress directed the Secretary of the Interior to proceed in conformity with State law on questions of water rights involved in Federal water projects. In this case (*Sporhase*), however, the Court concluded that the Congress has not expressed its intent to defer to State law regarding the export of water to nonreciprocating States. Congress' "intent and policy to sustain State legislation from attack under the Commerce Clause" must be "expressly stated," according to the Court.[1]

Against this background, we now turn to a discussion of the effect of the *Sporhase* case H.R. 4230. Section 10(b) of H.R. 4230 states:

> Pursuant to the commerce clause in article 1, section 8, of the United States Constitution, the Congress declares that the establishment and exercise of terms or conditions, including terms or conditions terminating use, on permits or authorizations for the reservation, appropriation, use, or diversion of water for a coal pipeline or extension thereof with respect to which a certificate is issued under section 10952 of title 49, United States Code, shall be determined pursuant to State law notwithstanding any transportation, use, or disposal of such water in interstate commerce.

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[1] *Sporhase* v. *Nebraska*, 50 U.S.L.W. at page 5120.

The Committee on Interior and Insular Affairs, in its report on H.R. 4230, cites section 10(b) and states: "The language is clearly intended to constitute a Federal delegation of power." (H.R. Rep. No. 423, Part 1, 97th Cong., 2d Sess. 13 (1982)). This Committee concurs with the preceding statement. The Supreme Court plainly declared that Congress has the power to delegate its power in this respect and that such a delegation is effective for sustaining State legislation. The court said:[2]

> Neither the fact that Congress has chosen not to create a federal water law to govern water rights involved in federal projects, nor the fact that Congress has been willing to let the States settle their differences over water rights through mutual agreement, constitutes persuasive evidence that Congress consented to the unilateral imposition of unreasonable burdens on commerce. In the instances in which we have found such consent, Congress' "intent and policy" to sustain state legislation from attack under the Commerce Clause was "expressly stated." *New England Power Co.* v. *New Hampshire*, *supra*, at (quoting *Prudential Ins. Co.* v. *Benjamin*, 328 U.S. 408, 427 (1946)). Cf. *Merrion* v. *Jicarillo Apache Tribe*, U.S. , , n. 21 (1982).[3]

Plainly, the Congressional intent in section 10(b) is to permit the States to impose terms and conditions, including those that terminate use of water for coal pipelines holding certificates acquired pursuant to this bill or prohibiting the use of water for use by certificated coal pipelines. The "intent and policy" of this legislation is "expressly stated" to sustain State legislation from attack under the Commerce Clause where the States impose terms and conditions on their allocation of water for certificated coal pipelines.

Finally, the bill as reported by the Committee contains a provision in section 5 that warrants special comment. The specific provision appears in new subsection 10952(b)(4)(C). Essentially, it provides that in making a determination of whether or not issuance of a certificate is required by the public convenience and necessity, the Commission is required to consider the past record, written plan, and sufficiency of assurances that the applicant will make maximum use of minority employees and minority-owned enterprises in the construction, operation, and maintenance of coal pipelines.

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[2] *Sporhase* v. *Nebraska*, *supra*, at page 5120.

[3] *New England Power Co.* v. *New Hampshire* is now cited at 102 S. Ct. 1096 (1982).

The Committee notes that the Bureau of the Census does not have an official definition for minority groups and that the definition used by Federal agencies tends to vary according to the legislation or the regulations pertaining to the specific program. The Committee is aware of the Interstate Commerce Commission's policy statement set forth in Ex Parte No. MC-150, *Minority Participation in the Motor Carrier Industry,* January 8, 1981, and the provision in section 10101(a)(7)(g) of the National Transportation Policy (49 U.S.C. 10101(a)(7)(g)). It should be noted that the policy is related solely to the motor carrier industry.

The purpose of this new provision is to provide guidance similar to the policy already promulgated by the Commission in order to foster participation by minority groups and minority-owned businesses in the pipeline projects seeking certification. The Committee believes that there should be particular emphasis on minority groups that have high unemployment rates. This is in no way intended to preclude modification in the policy should the facts warrant.

With respect to a minority owned enterprise, the Committee means any business concern which is over 50 per centum owned by one or more individuals classified as a minority, or in the case of any publicly owned business, over 50 percentum of the stock is owned by one or more individuals classified as a minority, and whose management and daily business operations are controlled by one or more such individuals.

SUMMARY

The following is a brief summary, in outline form, of the major provisions of H.R. 4230, as reported by this Committee.

I. BASIC PURPOSE

The basic objective of Federal coal slurry pipeline legislation is to establish a mechanism through which the Federal power of eminent domain may be exercised by coal slurry pipelines.

II. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND THE EXERCISE OF FEDERAL EMINENT DOMAIN POWER

A. *Application Process.*—A coal pipeline carrier which desires to avail itself of Federal eminent domain power must apply to the Interstate Commerce Commission for a certificate of public convenience and necessity.

1. Prior to filing an application with the Commission, the applicant must (a) publish (for a period of at least four weeks) notice of its intention to file an application in a newspaper of general circulation in each county in which the pipeline will be located, (b) send a copy of the notice to the Commission and

chief executive officer of each State, and (c) notify interested coal producers and coal users.

2. A period of at least 90 days must elapse between the final publication of notice and the filing of the application; during this period interested coal shippers would be able to contact the applicant and the commission.

3. The notice provision and the 90-day waiting period described above are extremely important. As will be discussed later, any shipper of coal which notifies the commission and the applicant during the waiting period of its interest in shipping coal and which subsequently supports the application during the certification process, will have a right to have its coal shipped under terms and conditions similar to those being accorded other shippers.

4. An application for a certificate must be under oath, contain such information as the commission requires, and be served on the chief executive officer of the involved states. Notice of the application must be filed in the federal register.

5. Within 10 days of the application's being filed, the Commission must notify the attorney general, who must subject each application to antitrust review. The review and resulting findings must be completed within 120 days.

6. The legislation calls for expedited hearings and precedures with a target date of 18 months for processing applications.

B. *Issuance of a Certificate.*—The Commission has the discretionary authority to issue or not issue a certificate of public convenience and necessity for any particular pipeline project.

1. The Commission may issue a certificate if it determines that the applicant is fit, willing and able, and the coal slurry pipeline is or will be required by the present or future public convenience and necessity.

2. The Commission may approve the application as filed or with modifications (including establishing a capacity for the pipeline which is greater or less than the capacity proposed in the application).

3. The Commission may deny the application if it fails to find the applicant fit, willing and able, or to find public convenience and necessity.

4. In making a determination of public convenience and necessity, the Commission must at least consider (a) evidence of public support (b) the effect on existing carriers (railroads); diversion of revenue or traffic, however, is not in and of itself sufficient to defeat an application, and (c) the past record, written plan, and sufficiency of assurances that the applicant will make maximum use of minority employees and minority-owned enterprises in the construction, operation, maintenance, extension, or increase in the capacity of the coal pipeline.

5. The Commission cannot issue a certificate if the Attorney General determines that the proposed pipeline operation will be inconsistent with the antitrust laws.

C. *Scope of Eminent Domain Authority.*—The legislation would allow any coal slurry pipeline which has obtained a certificate of public convenience and necessity to exercise the Federal power of eminent domain in Federal or State court to obtain the right-of-

way necessary to construct the pipeline. The legislation imposes a number of limitations on the exercise of eminent domain authority.

D. *Contracts.*—The legislation would allow certificated coal pipeline carriers to enter into contracts with the shippers of coal for transportation services under specified rates and conditions.

1. Prior to issuance of the certificate, a coal slurry pipeline carrier must notify the Commission if it wants to enter into contracts for all or any part of its capacity.

2. The contracts must be filed with the Commission and they are subject to its approval. The Commission, on its own initiative or on complaint, may institute a proceeding to review the contract.

3. The Commission may not approve a contract if it (a) would result in the capacity of the pipeline being exceeded, (b) would constitute a destructive competitive practice, or (c) would violate any of the terms and conditions in the certificate.

4. Rate provisions of title 49, U.S.C., do not apply to coal slurry pipeline contracts approved by the Commission.

5. Coal pipelines providing transportation under a contract approved by the Commission are not considered to be common carriers while providing such transportation.

6. Modifications of contracts must be approved by the Commission.

E. *Common Carrier Obligation.*—A certified coal pipeline company which has elected to enter into contracts for all or any part of its capacity has a duty to provide transportation services for certain shippers of coal under certain circumstances.

1. The duty arises with respect to two classes of shippers.

2. The first class, known as "original supporters," are shippers who have notified the Commission on the applicant (during the 90-day waiting period prior to the filing of the application) of their interest in shipping coal and who have supported the application through the certification process.

3. A certificated coal slurry pipeline which has elected to enter into contracts must provide each original supporter transportation of that volume of coal which the original supporter requested in the certification proceeding and for which a need is shown. If the capacity approved by the Commission is not sufficient to handle the total volume which all of the original supporters wish to ship, then the pipeline must provide each original supporter its equitable share of the capacity (as determined by the Commission).

4. The coal pipeline is given a one-year period (which the Commission can extend to two years) after the certificate is issued to enter into contracts with the original supporters.

5. An original supporter who was ready, willing, and able to enter into a contract with the coal slurry pipeline but was unable to agree on terms, may file a complaint with the Commission within 150 days of the expiration of the one-year period (or a longer period of up to two years if ordered by the Commission) in order to enforce its rights as an original supporter. The Commission may order the pipeline to provide the transportation under terms and conditions similar to those being offered other shippers.

6. An original supporter can waive its rights or voluntarily agree to different terms and conditions.

7. The Commission may not approve any other contracts unless it is satisfied that the coal slurry pipeline can meet the requirements of the original supporters.

8. The duty with respect to the second class of shippers arises when the coal slurry pipeline has unobligated capacity.

9. More specifically, the duty arises at the time when the coal slurry pipeline enters into a contract with a shipper for part of any unobligated capacity. During the 60-day period (or longer period as established by the Commission) beginning on the date the contract is filed, the coal slurry pipeline must enter into similar contracts with other shippers of coal on a first-come, first-served basis (in the order in which written offers are submitted) until the capacity of the pipeline is totally obligated or the period ends, whichever occurs first.

10. The Commission, on the complaint of a shipper, may order a coal pipeline carrier to provide the requested transportation if it finds that the pipeline has not complied with this duty. Shippers have 30 days in which to file a complaint with the Commission (following expiration of the 60-day period).

F. *Miscellaneous Terms and Conditions.*—The applicants and pipelines receiving certificates are subject to certain requirements.

1. Applicants must reimburse the Commission for the costs of processing the application and other associated costs.

2. A certificated coal pipeline carrier must comply with any terms and conditions which the Commission includes in its certificate.

3. A certificated coal pipeline carrier which wants to extend the pipeline or increase its capacity must apply to the Commission for a certificate of public convenience and necessity.

4. Certificated coal pipelines, to the maximum extent practicable, shall be buried underground.

5. All materials used in the construction and maintenance of certificated coal pipeline must be "manufactured in the United States substantially all from articles, materials and supplies mined, produced or manufactured, as the case may be, in the United States." The Commission may waive this requirement in certain situations.

III. RIGHTS-OF-WAY ACROSS FEDERAL LANDS

A. The provisions in the legislation relating to rights-of-way across Federal lands are very similar to the provisions in the Interior Committee's version.

B. The provisions basically set forth the requirements for obtaining rights-of-way across Federal lands.

C. The legislation also includes provisions relating to existing rights-of-way and pending proceedings.

IV. STATE WATER LAW

A. The provisions in the legislation relating to State water law are identical to the provison in the Interior Committee's bill.

B. The provisions (a) prohibit the United States or its agents from reserving or claiming water within any State for a certificated coal slurry pipeline except pursuant to State substantive and procedural law; (b) state that terms or conditions imposed on permits for use of water for certificated pipelines shall be determined pursuant to State law, notwithstanding any transportation, use, or disposal of such water in interstate commerce; and (c) state that this Act does not alter in any way State water law.

V. PROVISIONS RELATING TO NONCERTIFICATED PIPELINES

Certain provisions in the legislation would apply to noncertificated coal pipelines as well as certificated pipelines.

A. The legislation does not require coal pipelines to obtain a certificate of public convenience and necessity. The only pipeline carriers which must be certificated are those that desire to exercise the Federal right of eminent domain.

B. The legislation would allow noncertificated coal pipelines to enter into contracts with shippers of coal for transportation services under specified terms and conditions.

1. The pipeline must elect to enter into contracts for all or any part of its capacity and so notify the Commission in writing.

2. The contracts must be filed with the Commission and are subject to Commission approval. The Commission, on its own initiative or on complaint, may institute a proceeding to review the contract.

3. The Commission may not approve a contract if it (a) results in the capacity of the pipeline being exceeded or (b) constitutes a destructive competitive practice.

4. A noncertificated coal pipeline which elects to offer contracts has a duty with respect to certain coal shippers when the pipeline has unobligated capacity.

5. More specifically, the duty arises at the time when the coal pipeline enters into a contract with a shipper for part of the unobligated capacity. During the 60-day period (or longer period as established by the Commission) beginning on the date the contract is filed, the coal slurry pipeline must enter into similar contract with other shippers of coal on a first-come, first-served basis (in the order in which written offers are submitted) until the capacity of the pipeline is totally obligated or the period ends, whichever occurs first.

6. The Commission, on the complaint of a shipper, may order a coal pipeline to provide the requested transportation if it finds that the pipeline carrier has not complied with this duty. Shippers have 30 days in which to file a complaint with the Commission (following expiration of the 60-day period).

VI. COAL PIPELINE OPERATIONS

This legislation provides for the imposition of safety regulatory controls.

A. The legislation requires the Department of Transportation (Department) to promulgate regulations establishing uniform standards for coal pipeline facilities.

B. These standards would not apply to existing pipelines, pipelines under construction, or pipelines for which a final Environmental Impact Statement has been issued.

C. The Department would be given authority to waive any standard if it is consistent with pipeline safety.

D. The Department's standards would preempt State standards for interstate coal pipelines.

E. In case of violations, the legislation provides for civil penalties of up to $5,000 per day and criminal penalties of up to $10,000, or imprisonment for not more than one year, or both.

F. These standards would apply to both certificated and noncertificated pipelines.

VII. ENFORCEMENT AND PENALTIES

The legislation has enforcement provisions for the Department of Interior.

A. The legislation authorizes the Attorney General, at the request of the Secretary of the Interior, to enforce various provisions of the Act and any regulations or orders issued under the Act.

B. The civil and criminal penalties are similar to the penalties for violations of the Department of Transportation safety standards.

SECTION-BY-SECTION ANALYSIS

Section 1. SHORT TITLE. "Coal Pipeline Act of 1982."

Section 2. FINDINGS. The bill makes findings that the construction of certain coal slurry pipelines will be facilitated by the granting of the power of eminent domain and that slurry transportation of coal is a beneficial public use that justifies the granting of the Federal power of eminent domain to construct coal pipelines for which certificates of public convenience and necessity are issued under this Act.

Section 3. DEFINITIONS. This section contains definitions frequently used in this bill. They are as follows:

(1) The term "coal" means any of the recognized classifications of coal, including anthracite, bituminous, semibituminous, subbituminous, and lignite.

(2) The term "coal pipeline" means any pipeline system for the transportation of coal (whether in a liquid or solid state and whether alone or mixed with other substances) which is or will be constructed from a point in a State to a point in another State or from a point in a State to another point in such State through another State. A coal pipeline includes the line pipe, valves, pumping stations, coal collection lines or systems, and similar equipment or facilities used or useful in the transportation of coal.

(3) The term "Federal lands" means lands owned by the United States other than lands which are—

(A) located on the Outer Continental Shelf (as defined in the Outer Continental Shelf Lands Act),

(B) designated as wilderness,

(C) administered as part of the national park system,

(D) held in trust for an Indian or Indian tribe, or

(E) held in trust by, or under the control of, the Tennessee Valley Authority.

The term "Federal lands" does not include any lands owned by an Indian or Indian tribe and subject to a restraint against alienation imposed by the United States.

(4) The term "right-of-way" includes an easement, lease, permit, or license to occupy, use, or traverse Federal lands.

(5) The term "State" means a State of the United States and the District of Columbia.

Section 4. ANTITRUST PROVISIONS. This section states that nothing in this Act shall impair, amend, broaden, or modify the antitrust laws, however, note that the bill requires that the Attorney General conduct an antitrust review of applications for certificates.

Section 5. NEW SUBCHAPTER III OF CHAPTER 109 OF TITLE 49 OF THE UNITED STATES CODE. This section adds a new subchapter to Chapter 109 of title 49 that contains nine sections, numbered 10951 through 10959. The new sections are as follows:

SECTION 10951. EMINENT DOMAIN

Subsection (a) provides that any person issued a certificate under section 10952 may utilize the Federal power of eminent domain to acquire rights-of-way over private lands. The power of eminent domain can be exercised in a Federal or a State court.

Subsection (b) provides that the delegated eminent domain power cannot be used to acquire any right to take, use, or develop water rights.

Subsection (c) states that the delegated power of eminent domain may not be used to acquire rights-of-way over (1) any land which is part of an historic site of National, State, or local significance, and (2) any land designated as a wilderness area or wildlife and waterfowl refuge in accordance with applicable law by the duly constituted authority, unless there is no feasible and prudent alternative to such acquisition, and reasonable planning is done to minimize harm.

Subsection (d) provides that no person may exercise the power of eminent domain under this section unless such person is unable to acquire the right-of-way by negotiation. Negotiation should not be required to be endless or unreasonable. Therefore, it is intended that negotiation be reasonable and be completed within a reasonable period of time.

SECTION 10952. CERTIFICATE

Subsection (a) provides that anyone seeking to construct, operate, maintain, or extend a pipeline may apply for a certificate of public convenience and necessity. Anyone seeking to extend or increase the capacity of a certificated pipeline must apply for a certificate to extend or to increase the capacity of the pipeline.

Subsection (b)(1) provides that the Commission may grant a certificate if it finds that the carrier is fit, willing, and able to construct, operate, and maintain the pipeline or extension, and to comply with this subtitle and the Commission's regulations, and that the pipeline, or extension, or increase in capacity is or will be required by the public convenience and necessity.

Subsection (b)(2) provides that the Commission may deny the application if it fails to find the applicant fit, willing, and able, or to find public convenience and necessity.

Subsection (b)(3) provides that if the Commission approves the application, it shall issue a certificate (1) describing the construction, operation, maintenance, extension, or increase of capacity, (2) specifying the route, and (3) establishing the capacity for the coal pipeline or extension.

Subsection (b)(4) requires that in making a determination of public convenience and necessity, the Commission shall at least consider evidence of public support and the effect the issuance of the certificate would have on existing carriers, except that the Commission shall not find diversion of revenue or traffic from an existing carrier to be in and of itself contrary to public convenience and necessity. In addition, consideration must be given to participation, past and present, of minority employees and minority-owned businesses in pipeline development and operation.

Subsection (b)(5) provides that the term "fitness" includes financial fitness, operational fitness and safety fitness.

Subsection (b)(6) provides that in determining the capacity of a pipeline, the Commission must consider (1) any contract which is entered into or proposed on or before the date the application is filed, (2) any contracts which can be reasonably anticipated, and (3) other factors that may be relevant.

Subsection (c) establishes requirements governing the content of the application and the notice requirements for the filing of the application.

Subsection (d)(1) requires that the carrier publish notice of its intent to file an application. In addition, it establishes the method of publication and the substance of the notice. If the carrier does not comply with these notice requirements, no certificate can be issued by the Commission.

Subsection (d)(2) provides that any person desiring to use the coal pipeline should notify the Commission of such interest and specify the volume of coal which such person is interested in having transported by such pipeline.

Subsection (d)(3) requires that within 180 days after the effective date of this section, the Commission shall issue regulations to carry out the objectives of this subsection.

Subsection (e) requires that the Commission notify the Attorney General of the filing of any application. The Attorney General shall conduct an antitrust review of the application prior to the issuance of any certificate. The purpose of the review is to determine the likely effects of the issuance of the certificate on competition. The Attorney General has 120 days to complete the investigation and to advise the Commission. This advice can include findings and recommendations on conditions that need to be included in such certificate. No application can be approved if the Attorney General advises the Commission that the approval of the application is not consistent with the antitrust laws. The amendment clarifies that an antitrust review shall be deemed to be an "antitrust investigation" within the meaning of the Antitrust Civil Process Act (15 U.S.C. 1311, et seq.).

Subsection (f) provides that the Commission shall expedite all proceedings involving applications for pipeline operations. The Commission is given 18 months to dispose of an application; however, it may extend such time period for 90 days.

Subsection (g) requires that the applicant pay for all administrative and other costs involved in processing the application.

SECTION 10953. ELECTION OF CONTRACT SERVICE

This section provides that a coal pipeline carrier may elect to provide all or any part of its service pursuant to contracts. The election must be in writing and be submitted to the Commission. Coal pipeline carriers seeking certificates from the Commission must exercise this election prior to issuance of a certificate.

SECTION 10954. COAL PIPELINE CARRIER OBLIGATION

Subsection (a)(1) imposes an obligation upon certificated pipelines that elect to provide contract service. The obligation is that the pipeline must provide original supporters, as defined in section 10959, with transportation for the volume of coal which the original supporter requested in the application proceeding and for which a need is shown. With respect to evidence of need, the Commission may consider factors relating to the technological and economic feasibility of transporting the coal. If the Commission provides for a pipeline capacity that is insufficient to transport the total volume of coal requested by all of the original supporters and for which a need is shown, then the pipeline must provide transportation for each original supporter for that volume of coal which the Commission determines is such original supporter's equitable share.

Subsection (a)(2)(A) provides a time period of one year, which can be extended up to one additional year, during which carriers and original supporters may enter into service contracts. Once a contract is entered into and approved, the pipeline has met its obligation to the original supporter. The Commission, upon request, can require a pipeline to extend the pipeline to the original supporter's facilities if such extension is technologically and economically feasible.

Subsection (a)(2)(B) provides that an original supporter may waive any or all of the obligation imposed by this subsection. The waiver must be in writing.

Subsection (a)(3) provides that original supporters may file complaints to enforce their rights under this section.

Subsection (a)(4) provides that if the Commission determines, upon complaint, that the pipeline has not entered into a contract with an original supporter under section 10955 during the established time period, and the original supporter was ready, willing, and able to enter into a contract, then the Commission may order the pipeline to provide transportation. The Commission has the same power where a contract has been entered into during the time limits specified by the Commission in accordance with this subsection, and the contract has not yet been approved.

In addition, the Commission may order that the pipeline be extended to the facilities of the complainant, if such extension is technologically and economically feasible.

The Commission shall determine rates and other terms and conditions for the tansportation service ordered by it, taking into account terms and conditions of any contracts entered into by other original supporters.

Subsection (b)(1) applies to contracts by all coal pipeline carriers not covered by subsection (a) and which, if approved, would leave some unused capacity in the pipeline. Where a contract of this type is entered into, the pipeline must hold itself out to enter into contracts with other shippers under similar terms and conditions for a period of 60 days, or longer, if such longer period is ordered by the Commission.

The priority of a contract under this section is established by the date a shipper submits a written offer to the pipeline to enter into a contract similar to the one approved.

The obligation of the pipeline to enter into contracts with other shippers imposed by this section remains in effect until pipeline capacity is totally obligated or until the 60 day period, or the time period ordered by the Commission expires. Whichever event occurs first tolls the obligation of the pipeline.

Subsection (b)(2) provides the shippers with 30 days to file complaints for the enforcement of its contractual rights created under subsection (b)(1).

Subsection (b)(3) provides that where upon complaint the Commission finds that the pipeline is violating this subsection and has an obligation to enter into a contract with a complainant, the Commission shall order the service specified in the offer under such terms and conditions as it may determine taking into account the terms and conditions set forth in the shipper's offer.

Where contracts are entered into in the incorrect chronological order, the Commission cannot approve them. The Commission may take any action that is necessary pursuant to subsection 10955(g) to carry out this subsection.

Subsection (b)(4) gives the Commission authority to acquire the information it needs to carry out this section.

SECTION 10955. CONTRACTS

Subsection (a) allows all coal pipelines which elect to do so in accordance with section 10953 to enter into contracts for the transportation of coal.

Subsection (b) requires that all contracts be filed with the Commission. The Commission must publish tariff rules for contracts in order to assure that the essential terms of such contracts are available to the general public in tariff format.

Subsection (c)(1) requires that all contracts be approved by the Commission before the contracts become effective.

Subsection (c)(2) provides that the Commission has 30 days after the date the contract is filed to institute a proceeding to review a contract.

Subsection (c)(3) gives the Commission a 120 days to complete a proceeding instituted for the review of a contract, during which time the Commission shall approve or disapprove the contract.

Subsection (d) provides that the Commission may not approve (1) a contract if such approval will result in the total tonnage of coal obligated to be transported by the pipeline in any period under contracts approved under this section and under orders issued by the Commission under section 10954 exceeding the maximum capacity of the pipeline in such period, or (2) a contract which constitutes a destructive competitive practice. Here, the Committee expects the Commission to consider whether the terms of the contract constitute predatory practices or pricing.

Subsection (e) prohibits the Commission from approving a contract that violates a term or condition imposed by the Commission upon a certificate.

Subsection (f) prohibits the Commission from approving a contract unless the Commission is satisfied that there is sufficient capacity available to provide the service specified in the contract and to meet the certificated pipeline's obligation to any original supporters.

Subsection (g) provides that all contracts must contain a provision allowing for discontinuance or interruption of service in order to accommodate service ordered by the Commission under section 10954.

Subsection (h) provides that all contracts are effective on the date approved but that in no event may contracts be approved in less than 30 days after the date they are filed.

Subsection (i)(1) provides that the Commission may not require a carrier to violate a contract except to comply with section 10954 or 11128 of this subtitle.

Subsection (i)(2) provides that except as provided in section 10954, a pipeline cannot be required or obligated to interrupt service under a contract approved under this section for the purpose of prorating service to other shippers unless the contract so provides.

Subsection (j)(1) provides that the provisions of Chapter 107 do not apply to contracts approved under this section.

Subsection (j)(2) provides that a pipeline is not a common carrier for the service it provides under a contract.

Subsection (k) provides that any modification of a contract shall be filed with the Commission and is subject to the provisions of this section.

SECTION 10956. COAL PIPELINE CONSTRUCTION AND MAINTENANCE

Subsection (a) requires that all articles, materials and supplies used in the construction and maintenance of certificated coal pipelines be manufactured in the United States from articles, materials and supplies mined, produced, or manufactured in the United States.

Subsection (b) provides that the above requirement does not apply where the Commission finds that (1) the cost of imposing the requirement is unreasonable, or (2) the pertinent articles, materials, or supplies are not available in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Subsection (c) provides that the requirement in subsection (a) does not apply where the cost of the articles, materials, or supplies purchased is less than $100,000 or where the purchase contract was entered into before the date of enactment of this section.

Subsection (d) defines "United States" as the several states, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

SECTION 10957. CERTAIN ADDITIONAL USERS OF RIGHT-OF-WAY

This section provides that a right-of-way can be acquired over a right-of-way secured under this Act provided it is consistent with and does not interfere with operation and maintenance of the coal pipeline.

SECTION 10958. UNDERGROUND CONSTRUCTION

This section provides that all pipelines should be located underground to the maximum extent practicable and consistent with environmental protection, safety, and good engineering and technological practices.

SECTION 10959. DEFINITIONS

Subsection (a) contains definitions to be inserted in Title 49. They are as follows:

(1) "Coal" means any of the recognized classifications of coal, including anthracite, bituminous, semibituminous, subbituminous, and lignite;

(2) "Coal pipeline" means any pipeline system for the transportation of coal (whether in a liquid or solid state and whether alone or mixed with other substances) which is or will be constructed from a point in a State to a point in another State or from a point in a State to another point in such State through another State. A coal pipeline includes the line pipe, valves, pumping stations, coal collection lines or systems, and similar equipment or facilities used or useful in the transportation of coal.

(3) "Coal pipeline carrier" means a person providing or seeking to provide transportation of coal by pipeline subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this subtitle.

(4) "Original supporter," as used with respect to a certificate issued under section 10952 of this subchapter, means a shipper of coal who is identified in the application for such certificate as a supporter of such application or who, before such application is filed with the Commission, notifies the Commission of his interest in using the coal pipeline or extension thereof authorized by such certificate and who supports approval of such application in the certification proceeding.

(5) "Private lands" means any interest in any land other than interests (A) owned by the United States or owned by any State or any political subdivision thereof; (B) held in trust by the United States for an Indian or Indian tribe or owned by an Indian or Indian tribe subject to a restraint against alienation

imposed by the United States, or (C) owned by a regional or village corporation established under the Alaska Native Claims Settlement Act, as amended, if such land was transferred to such corporation pursuant to such Act.

(6) "Right-of-Way" means such interest in land, including an ownership (fee simple) interest, as may be necessary for a coal pipeline.

Subsection (b) presents the analysis for Chapter 109 of Title 49, United States Code, as amended by this section.

Subsection (c) is a technical change made to section 10322 of Title 49 in order to specify that the Commission appellate procedures do not apply to new sections 10952, 10954, and 10955.

Subsection (d) allows the Interstate Commerce Commission to bring a civil action to enforce this subtitle or a regulation, order, or a condition on a certificate when violated by a certificated coal pipeline carrier.

Subsection (e) states that contracts entered into by a coal pipeline and shipper of coal in effect before the enactment of this Act will not be affected by the Act. In addition, such contracts shall be deemed in accordance with and approved under section 10955.

SECTION 6. RIGHTS-OF-WAY ACROSS FEDERAL LANDS

Subsection (a) contains authority for the Secretary of the Interior to grant rights-of-way across Federal lands to pipeline carriers holding certificates of public convenience and necessity under this Act. If the affected lands are under the jurisdiction of any agency or department other than the Department of the Interior, the Secretary shall consult with the head of such agency or department before granting such rights-of-way through Federal lands for construction or extension of a coal pipeline.

Subsection (c) prohibits the granting of any right-of-way through any Federal land which is part of a historic site, recreation area, or wildlife and waterfowl refuge, of national, State or local significance, unless there is no feasible and prudent alternative, and reasonable planning is made to minimize harm to such area.

SECTION 7. APPLICABLE REQUIREMENTS CONCERNING FEDERAL LANDS

Subsection (a) makes specifically enumerated provisions of the Federal Land Policy and Management Act of 1976 (Public Law 94–579) applicable to rights-of-way across Federal lands granted or renewed under Section 6 of this Act.

Subsection (b) authorizes the Secretary of the Interior to impose, in connection with the granting or renewal of rights-of-way under Section 6 of this Act, such terms and conditions as may be deemed necessary to protect the public interest in lands traversed by the right-of-way and lands adjacent thereto.

SECTION 8. EXISTING RIGHTS-OF-WAY AND PENDING PROCEEDINGS

Subsection (a) provides that Title V of the Federal Land Policy and Management Act (Public Law 94–579) or other applicable law shall apply to the granting and administration of any right-of-way through Federal lands for a coal pipeline if (1) the application was

filed under the authority of such laws and was not finally disposed of before the date of enactment of this Act, or (2) the application is made after such date of enactment by a person not holding a certificate issued under this Act.

Subsection (b) states that the administration of right-of-way granted before the date of enactment of this Act shall be governed by the Federal Land Policy and Management Act or any other authority of law as applicable.

Subsection (c) provides that, when a certificate is issued with respect to a coal pipeline, sections 6 and 7 of this Act, rather than another provision of law, shall govern the renewal of the right-of-way for any such pipeline and the extension or acquisition of such pipeline.

Subsection (d) provides that sections 6, 7, and 8 shall not affect lawsuits commenced prior to the date of enactment of this Act.

SECTION 9. REGULATIONS

This section provides that the Secretary of the Interior may issue such regulations as may be necessary to carry out sections 6, 7, and 8 of this Act.

SECTION 10. STATE WATER LAW

This section is identical to section 10 of H.R. 4230 as reported by the Committee on Interior and Insular Affairs.

Subsection (a) states that the United States (or its agents, permittees, licensees, or transferees) shall not reserve, appropriate, use, divert, dedicate, or claim water within any State for a certificated coal pipeline, unless such reservation, appropriation, use, diversion, dedication or claim takes place pursuant to State substantive and procedural law.

Subsection (b) is a Congressional declaration that, pursuant to the Commerce Clause of the United States Constitution, the establishment and exercise of terms or conditions (including terms or conditions terminating use) on permits or authorizations for the reservation, appropriation, use or diversion of water for a certificated coal pipeline shall be determined pursuant to State law notwithstanding any transportation, use, or disposal of such water in interstate commerce.

Subsection (c) states that none of the provisions in this legislation shall alter in any way any provision of State law or of any interstate compact governing the appropriation, use, or diversion of water.

The Committee has had an opportunity to review the report (House Report 97-423, Pt. I) accompanying the Interior Committee version of this legislation and is in complete accord with the discussion of section 10 in that report.

SECTION 11. COAL PIPELINE OPERATIONS

Subsection (a)(1) requires the Secretary of Transportation, within one year of enactment of the Act, to establish uniform Federal standards for the safe design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation,

replacement, and maintenance of the facilities of a coal pipeline or extension thereof. For pipelines in existence, under construction, or with regard to which a final environmental impact statement has been prepared prior to the day the standards are adopted, those affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable.

Subsection (a)(2) allows the Secretary of Transportation, upon application by the person owning or operating a coal pipeline, to waive (in whole or in part) compliance with any standards issued under this section upon the Secretary's determination that such waiver is consistent with coal pipeline safety.

Subsection (a)(3) provides that nothing in this section authorizes the Secretary of Transportation to issue Federal standards prescribing the location or routing of any coal pipeline.

Subsection (a)(4) states that after the effective date of the regulations issued by the Secretary of Transportation pursuant to subsection (a)(1) of this section, no State or political subdivision thereof may adopt or continue in force any safety standards applicable to the construction, operation, or maintenance of any coal pipeline or extension thereof to which such Federal standards apply.

Subsection (b) allows the Attorney General, at the request of the Secretary of Transportation, to institute a civil action in the appropriate U.S. District Court for a restraining order, injunction, or other appropriate remedy to enforce any regulation or order issued under this section.

Subsection (c) provides for a civil penalty of not more than $5,000 for each and every day of violation and continued violation of any regulation or order issued under this section after notice of violation and expiration of any period allowed for corrective action. The Secretary of Transportation may assess, compromise, and collect such penalties.

Subsection (d) provides that any person who knowingly and willfully violates any regulation or order under this section or makes any false statement, representation, or certification in any document filed or required under this section shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment of not more than one year, or both.

Subsection (e) provides that whenever a person violates any regulation or order issued under this section, any director, officer, or agent of such person who knowingly or willfully authorized, ordered, or carried out such violation shall be subject to those fines and/or terms of imprisonment as those set forth under subsection (d) of this section.

SECTION 12. ENFORCEMENT AND PENALTIES

Subsection (a) allows the Attorney General, at the request of the Secretary of the Interior, to institute a civil action in the appropriate U.S. District Court for a restraining order, injunction, or other appropriate remedy to enforce any provision of this Act or any regulation or order issued under the authority of this Act.

Subsection (b) provides for a civil penalty of not more than $5,000 for each and every day of violation and continued violation of any provision of this Act, or any regulation or order issued under the

authority of this Act, after notice of violation and expiration of any period allowed for corrective action. The Secretary of the Interior may assess, compromise and collect such penalties.

Subsection (c) provides that any person who knowingly and willfully violates any provision of this Act or any regulation or order issued under the authority of this Act, or makes any false statement, representation, or certification in any document filed or required under this Act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment of not more than one year, or both.

Subsection (d) provides that whenever a person violates any provision of this Act, or any regulation or order issued under the authority of this Act, any director, officer, or agent of such person who knowingly or willfully authorized, ordered, or carried out such violation shall be subject to those fines and/or terms of imprisonment as those set forth under subsection (c) of this section.

Subsection (e) states that this section shall not be construed as reducing or limiting the enforcement authorities vested in the Secretary of the Interior by any other provision of law.

Subsection (f) states that this section does not apply to violations of regulations or orders issued under sections 5 and 11 of this Act.

Committee Consideration

H.R. 4230 was introduced on July 21, 1981, and was referred to the Committee on Public Works and Transportation and the Committee on Interior and Insular Affairs. The Committee on Interior and Insular Affairs reported H.R. 4230 on January 29, 1982.

This Committee's Subcommittee on Surface Transportation held hearings on H.R. 4230 on December 8 and 9, 1981. On March 30, 1982, the Subcommittee on Surface Transportation met in open markup to consider H.R. 4230. The Subcommittee reported H.R. 4230 to the full Committee with an amendment in the nature of a substitute. On July 28, 1982, the full Committee on Public Works and Transportation met in open markup session and ordered reported to the House, by a roll call vote of 26 ayes to 20 nays, the bill H.R. 4230 with an amendment.

Cost of the Legislation

In accordance with rule XIII(7) of the Rules of the House of Representatives, the following information is furnished.

The total administrative costs incurred will be approximately $50,000.

Committee Action and Vote

The Committee in compliance with rule XI(2)(1)(2)(B), the majority of the Committee having actually been present, the final tally on roll call vote to report the bill was 26 ayes and 20 nays.

Compliance With Clause 2(1) of Rule XI of the Rules of the House of Representatives

(1) With reference to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, no separate hearings were held on

the subject matter of this legislation by the Subcommittee on Investigations and Oversight. However, the Subcommittee on Surface Transportation held hearings on this subject matter in 1981.

(2) Clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives requires that the report of any committee on a measure which has been approved by the committee shall include the statement required by section 308(a) of the Congressional Budget and Impoundment Control Act of 1974, if the measures provide new budget authority or new or increased tax expenditures. With respect to section 308(a)(1)(A), the letter submitted by the Director of the Congressional Budget Office below satisfies the requirement.

(3) With respect to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee has received a report prepared by the Congressional Budget Office under section 403 of the Congressional Budget Act.

The report is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., August 5, 1982.

Hon. JAMES J. HOWARD,
Chairman, Committee on Public Works and Transportation, U.S. House of Representatives, 2165 Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 4230, the Coal Pipeline Act of 1982, as ordered reported by the House Committee on Public Works and Transportation, July 28, 1982.

The bill is designed to facilitate the transportation of coal by pipeline across federal and nonfederal lands. The bill amends the Interstate Commerce Act to allow acquisition of the rights-of-way over private lands by exercise of the power of eminent domain in federal or state court. A prerequisite for exercising eminent domain is the possession of a certificate of convenience and necessity issued by the Interstate Commerce Commission (ICC). The ICC is authorized to issue such certificate if it determines that the applicant is a common carrier and that future public convenience and necessity will be enhanced by construction, operation, and maintenance of the coal pipeline. The ICC must consider evidence of public support and the effect of the certificate on existing carriers before approving the application. Further, the ICC must forward the potential carrier's application to the Attorney General, and the Justice Department must conduct antitrust review to determine the likely effects upon competition.

Section 6 of the bill allows the Secretary of the Interior to grant rights-of-way over federal lands to holders of ICC certification. Section 10 of the bill states that nothing in this act shall alter in any way any provision of state law, regulation, or rule of law, or any interstate compact governing the appropriation, use or diversion of water. The bill also requires the Secretary of Transportation to issue regulations on federal standards for construction, operation, and maintenance of coal pipeline facilities.

The agencies most affected by the bill include the ICC, the Department of the Interior, the Department of Justice, and the Department of Transportation. Section 5 of the bill which amends the Interstate Commerce Act states that each applicant for a certificate shall reimburse the Commission for administrative and other costs incurred in processing an application. The Department of the Interior for review, processing, and monitoring of rights-of-way applications is reimbursed under existing regulations. The Congressional Budget Office expects that the Department of Transportation through the Research and Special Programs Administration would issue regulations on coal pipeline operations as is currently performed for gas pipeline operations. The Justice Department must conduct an antitrust review to determine the likely effects upon competition of approval of any coal pipeline application. Costs to the Justice Department are dependent upon the number of applications referred and the resources necessary to conduct the antitrust investigation. Each staff year of the antitrust division costs approximately $50,000. It is assumed that in total no more than a full staff year would be used for coal pipeline antitrust review.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

(4) With respect to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

(5) With respect to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the following information is provided:

The effects of carrying out H.R. 4230 should be minimal.

ADDITIONAL VIEWS OF HON. RAY KOGOVSEK

Mr. Chairman, we are all very much aware of the controversy that has surrounded coal slurry pipeline legislation because of the concern for State water rights. We are also aware that, even with the "protective language" proposed in the past, and now included in the bill, many western Members of Congress still are demonstrating strong concern about the impact of this type of legislation on State water rights, laws, and resources. Yet, even with the assurances given that "state water laws would not be infringed upon," strong objection is still raised in regard to this legislation.

The Western States are very concerned about the impact of future demands on this scarce resource of water. As a result of their concern, highly developed systems governing the distribution and use of this resource have been developed. Key to this concern is the protection of the States sole ability to govern their water resources. This is why legislation such as H.R. 4230 has been so alarming. The protection of States water rights is vulnerable until, not only Congress, but also the Courts, establish the primacy of State water laws.

The United States Supreme Court held in *Sprohase et al.* v. *Nebraska ex rel. Douglas, Attorney General,* that "Ground water is an article of commerce and therefore subject to congressional regulation." The U.S. Constitution granted to Congress the power, "not only to regulate the stream of commerce itself, but activities which affect interstate commerce, including wholly intrastate activities," as stated by Justice Rehnquist. Although many believe that the Court has reversed consistent and historical interpretation that the states may, without federal interference, appropriate and regulate the waters within their political boundaries, such implication is not totally within the Court's decision. In fact, the Court did leave open the "door" for Congressional action.

Without objection, I would like to quote from *Sprohase* v. *Nebraska:*

> Although the 37 statutes and the interstate compacts demonstrate Congress' deference to state water law, they do not indicate that Congress wished to remove federal constitutional constraints on such laws. The negative implication of the Commerce Clause, like the mandates of the Fourteenth Amendment, are the ingredients of the valid state law to which Congress has deferred. Neither the fact that Congress has chosen not to create a federal law to govern water rights involved in federal projects, nor the fact that Congress has been willing to let the states settle their differences over water rights through mutual agreement, constitutes persuasive evidence that Congress consented to the unilateral imposition of unreasonable bur-

> dens on commerce. In the instances in which we have found such consent, Congress' "'intent and policy' to sustain the legislation from attack under the 'Commerce Clause' was 'expressly stated.'"

In essence, because ground water is deemed to be an article of commerce, Congress, under its Commerce Clause Powers, has the ability and authority to regulate such water. Furthermore, Congress may defer such powers to the states. Yet, in doing so, such deference must meet two basic tests: 1) clarity of intent; and 2) protection of the Fourteenth Amendment mandates in both the Congressional consent and state law. Furthermore, in those instances where Congress' consent to defer its regulatory powers to the states for ground water resources, and where it is recognized that certain state laws may be construed to interfere with or obstruct interstate or intrastate commerce, Congress must "expressly" establish its intent to uphold state law.

Mr. Chairman, the "water language" that is presently contained in H.R. 4230 leaves serious question as to whether or not it in fact meets the judicial test, as described above. The first challenge to the language can be made in Section 2—Findings. Congressional findings and declaration are that coal pipelines will be facilitated by granting the power of eminent domain; and the construction of such pipelines is a beneficial public use. In no instance does Congress mention that it is in the public interest to defer to the states the authority to regulate their water resources. Furthermore, as I interpret the Congressional Findings and Declaration, it is my opinion that primacy of coal pipelines has been established, rather than primacy of state water laws, contrary to Congressional intent that state water laws will fully govern the use of the states' resource for such pipelines. The result of this deficiency leaves open the door for judicial interpretation of Congressional intent. It is my feeling that the courts would rule that state water laws may govern the use of water for coal pipelines, provided that such state laws are consistent with the purpose of the coal pipeline legislation.

In addition, the present language in the bill makes no mention of Congressional intent to establish the primacy of state water law, even though there may be some burden on interstate commerce.

I am also concerned with the manner in which a "certificate" for eminent domain authority may be issued. Although the language in Section 10 of the bill provides that it is Congress' intent to protect the "generic" principles of state water laws, the lack of clarifying language in this section, as well as conforming language in other sections, redefines Congressional intent in regard to the primacy of state water law, Section 10 reads:

> (a) The United States or its agents, permittees, licensees, or transferees shall not reserve, appropriate, use, divert, dedicate, or claim water within any State for a coal pipeline or extension thereof with respect to which a certificate is issued under section 10952 of title 49, United States Code, unless such reservation, appropriation, use, diversion, dedication, or claim takes place pursuant to State substantive and procedural law.

(b) Pursuant to the commerce clause in article I, section 8, of the United States Constitution, the Congress declares that the establishment and exercise of terms or conditions, including terms or conditions terminating use, on permits or authorizations for the reservation, appropriation, use, or diversion of water for a coal pipeline or extension thereof with respect to which a certificate is issued under section 10952 of title 49, United States Code, shall be determined pursuant to state law notwithstanding any transportation use, or disposition of such water in interstate commerce.

(c) Nothing in this Act shall alter in any way any provision of State law, regulation, or rule of law or any interstate compact governing the appropriation, use, or diversion of water.

Several concerns arise when this language is viewed within the context of the language providing for the granting of eminent domain and issuance of a certificate. It is clear that a coal company can be issued a "certificate" before it has an adjudicated right to the water. In fact, a pipeline company, under the current language, can receive a certificate by the mere issuance of a conditional decree. All the bill says is that, regardless of when a decree is issued, when seeking permits for water, the company must follow state water laws.

The language in Section 10 does prohibit the United States, its agents, permittees, licensees, or transferees from "acquiring" a reservation, appropriation, use, diversion, dedication, or claim to water unless such takes place in accordance with state law. However, the bill does not place any restrictions on existing reservations, appropriations, dedications, or claims. Thus, it will be left to the courts to determine if an existing reserved right may be sold or transferred to a pipeline company. More important, the legislation does not address or distinguish Indian water, which is significantly different from state water. Nor does the bill recognize the sovereignty of Indian Tribes for purposes of obtaining an appropriation or right to use water for coal pipelines.

Finally, and certainly with no less importance than the above mentioned concerns, H.R. 4230 as presently drafted, contains no recognition of interstate water compacts. This is no less than an "open door" to the taking of waters from a state. As we are all aware, the fundamental principles of western water law hinge on the various interstate water compacts, particularly now that many of our streams and aquifers are significantly over-appropriated. In these instances water from such areas are shared with other states—either shared river basin systems or shared ground water formations. Most important is the fact that such states are obliged to recognize each other's water rights, although each retains the right to control its apportioned waters. Central to interstate compacts is that participating states may reserve apportioned waters for beneficial use within their borders.

Two basic issues cause concern or legal challenge to the division of waters via the various compacts: (1) when a basin state claims more water than it has been apportioned; and (2) when a non-basin state intends to receive a delivery of compact waters, without

making compensation for the loss of basin or aquifer compact water. H.R. 4230 leaves open for judicial interpretation, the question of whether a water delivery, from a upper basin state to a lower basin state, for use in a coal pipeline is subject to a compact credit to such upper basin state.

In the event that this unnecessary legislation should be enacted into law, I have in hand, a package of amendments which will address my concerns. As you may be aware, similar amendments have been incorporated in the Senate version of the coal pipeline bill. However, I will not introduce these today, with the understanding that the Committee on Public Works and Transportation will meet with the Committee on Interior and Insular Affairs, to review the language and impacts of *Sporhase* as it relates to this legislation. I think we all agree that it is not our intent to abrogate or interfere with the states' ability to regulate their waters. Therefore, I feel the issues I have just raised should be given more attention, as a simple matter of precaution.

Thank you.

RAY KOGOVSEK.

MINORITY VIEWS OF HON. BUD SHUSTER; HON. BOB EDGAR; HON. GENE SNYDER; HON. ARLAN STANGELAND; HON. GUY MOLINARI; HON. EUGENE ATKINSON; HON. NORMAN Y. MINETA; HON. JAMES L. OBERSTAR; HON. HENRY J. NOWAK; HON. MARILYN LLOYD BOUQUARD; HON. JOHN G. FARY; HON. BILLY LEE EVANS; HON. NICK JOE RAHALL II; HON. DOUGLAS APPLEGATE; HON. WILLIAM BONER; HON. WAYNE DOWDY; HON. BARBARA KENNELLY; HON. RAY KOGOVSEK

This coal slurry pipeline bill is blatant special interest legislation that confers the awesome power of the federal right of eminent domain to a select few private corporations. It should be defeated. In 1978, the full House badly defeated a similar bill 246–161. In 1980, the House Public Works and Transportation Committee reported a coal slurry bill to the full House by a narrow vote of 25–22. The House did not consider the bill. In 1982, the House Interior Committee reported out H.R. 4230 by the slimmest of margins 21–20 and this Committee narrowly defeated a motion to table by the same vote.

As in past years, this Committee is in a rush to judgment, not fully examining the major problems with the bill. Efforts by several Committee Members to simply request a one-day hearing on a significant development in the states' water rights area were quashed. This Committee has prided itself in the past for being united when it took legislation to the floor of the House. Unfortunately, this year the Committee is deeply divided and lacks necessary information as it brings this bill before the House.

We strongly oppose this legislation based upon the following eight facts:

1. A recent Supreme Court decision, *Sporhase* v. *Nebraska,* has placed federal and state laws impacting water rights into question. The pirating of any states' water by coal slurry special interests is more likely at this time than ever before.
2. There is no justification for the granting of the special privilege of federal eminent domain.
3. The adverse impact of this bill could cost the railroad industry 40,000 permanent jobs.
4. The effort to confer the common carrier status on coal slurry pipelines is not accomplished.
5. The legislation will hurt small coal operators.
6. The consumer will suffer with increased utility costs.
7. Existing transportation modes are capable of transporting increased quantities of coal as projected for the future.
8. The Reagan Administration, unlike previous Administrations, is opposed to the enactment of this legislation based upon the bill's violation of states' rights.

1. STATE WATER RIGHTS AND THE SPORHASE V. NEBRASKA SUPREME COURT DECISION

One major concern that has been fostered by this legislation for the last decade and particularly with this bill is the adverse impact on the supply of water and the right of individual states to control this vital natural resource located within their borders. It should be understood that for every ton of coal hauled, there must be a ton of water or 240 gallons of water. The Coalstream Pipeline running from the east and midwest to Florida has a planned annual capacity of from 25 million to 55 million tons of coal. That translates into almost the same tonnage of water, or 6 to 13.2 billion gallons of water per year. That is only the tip of the iceberg in the amount of water to be transferred from one region of this country to another.

It is our concern that coal slurry interests will exploit the needs of one state over another in a bid to acquire water which is essential for their pipelines. In addition, with 83 percent of the nation's water supply being used by agriculture we can see competition immediately arising between energy interests and agricultural concerns.

A recent Supreme Court decision has literally thrown the entire issue of state water rights into question and subverted any attempt by the proponents of this bill to claim that nothing in this legislation will cause the usurping of state control over its water resources. Attempts by Members of this Committee to hold a hearing on the impact of this case on state water law have been thwarted by the proponents. Certainly a few days of delay to hear the facts would not have seriously harmed its prospects in the House. A bill reported to the floor without the full investigation of a major issue could result in the Committee passing legislation that goes against its stated intent of protecting state water rights.

The facts of the case are:

Appellants jointly owned contiguous tracts of land in Nebraska and Colorado. A well physically located on the Nebraska tract pumps ground water for irrigation to the Nebraska tract and the Colorado track. The appellants did not obtain the permit requried by Nebraska law, which states:

> Any person * * * intending to withdraw ground water from any well or pit located in the State of Nebraska and transport it for use in an adjoining state shall apply . . . for a permit to do so. If the Director of Water Resources finds that the withdrawal of the ground water requested is reasonable, is not contrary to the conservation and use of ground water, and is not otherwise detrimental to the public welfare, he shall grant the permit if the state in which the water is to be used grants reciprocal rights to withdraw and transport ground water from that state for use in the State of Nebraska.

The appellee brought this action to enjoin appellants from transferring the water across the border.

The Supreme Court questioned the theory of "public ownership" of natural resources noting that it is "but a fiction expressive in legal shorthand of the importance to its people that a state have the power to preserve and regulate the exploitation of an important resource. It noted that in Texas the owner of land could sell all of the water he could capture from wells. By contrast, in Nebraska the land owners cannot appropriate water in excess of a reasonable and beneficial use upon the land which he owns, especially if such use is injurious to others who have rights to the waters, and if the natural underground supply is insufficient for all owners, each is entitled to a portion. Recognizing that a Nebraska surface owner withdrawing ground water therefore enjoys a lesser ownership in the water than a comparable Texas surface owner, the Court concluded that this fact was not decisive for the purposes of commerce clause analysis. The Court noted that if Nebraska ground water was not an article of commerce, Congress would be more limited in Nebraska than it would by in Texas from regulating ground water. It then concluded that water is an article of commerce.

Having concluded that water is an article of commerce, the Court turned to an analysis of the burdens imposed by the Nebraska law on interstate commerce. Nebraska unquestionably could regulate for the purpose of conserving water and except for the reciprocity provision, the Court noted that the Nebraska law's provisions were reasonably drafted for the advancement of conservation. The reciprocity provision, however, imposed unwarranted burdens on interstate commerce and was not narrowly drawn to meet the concern of water conservation. The provision could prohibit interstate water transfers even if water was abundant in an area. Thus, the reciprocity provision violated the commerce clause of the Constitution because it discriminated against interstate commerce in ways not tied to legitimate state goals.

The Court opinion suggests that state statutes which contain prohibitions on the export of water or that are not based on explict water conservation needs are unconstitutional. It is therefore likely that most of the fourteen existing anti-export laws cannot be upheld. The Court's opinion leaves open the possibility for individual states to attempt to fashion legislation which passes the Consititutional test by being directly related to the state's legitimate needs to conserve state water supplies for agriculture, drinking water and comparable uses.

This approach presents the states with a serious problem: every time a state attempts to limit water diversions its action will be subject to review in the federal courts on Constitutional grounds to determine whether the state in fact has a legitimate conservation need. A whole new body of federal case law seems likely to emerge in the determination of such issues, leaving the states with no clear expectations and security regarding their water supplies.

Perhaps more importantly, the *Sporhase* decision also disrupts a fundamental assumption in western and midwestern water law. The fourteen state statutes regulating exports of water form an essential part of the network on limitations on water use west of the Mississippi. Central to all the interstate compacts and the equitable apportionment orders of the Supreme Court is the assumption that a state may reserve for beneficial use within its borders the waters that have been equitably apportioned to it. The compacts and equitable apportionment decisions would be meaningless without this assumption.

The Court has raised the spectre that a state cannot in fact regulate and control the share of water granted to it by the Court or by interstate compact. In a case which *Sporhase* overturned, Justice Holmes observed that "few public interest are more obvious, indisputable, and independent of particular theory than the interest of the public of a state to maintain the rivers that are wholly within it substantially undiminished, except by such drafts upon them as the guardian of the public welfare may permit * * *" *Hudson Co. Water Co.* v. *McCarter,* 209 U.S. 349, 356 (1908).

Thus it is clear that we must understand the full impact of the *Sporhase* decision. Although the majority on this issue would not permit even a one-day hearing on the matter to obtain opinions and advice from the Department of Justice and Interior, we need to know exactly what Congress can do in the way of legislation to implement its regulatory authority under the Commerce Clause of the U.S. Constitution. Also, we need to know what authority the *Sporhase* case allows Congress to leave to the states and what kind of restriction and limitation Congress can place on the authority it grants to the states. The *Sporhase* case leads to the question of what uses of water are considered legitimate and looks to Congress for guidance. This bill states in its findings that "the construction of pipelines to transport American coal is a *beneficial public use* * * *" which implies that Congress has possibly spoken on the issue of legitimate water use. The question needs to be answered of whether agriculture which uses 83% of the nation's water should be shoved aside. Unfortunately, the Committee has not seen the need to take the time to answer these questions.

2. NO JUSTIFICATION FOR FEDERAL EMINENT DOMAIN

There is an argument for granting the right of federal eminent domain in cases where an overwhelming national interest is served. The coal slurry pipeline interests have based their argument on the national need for the cheap and efficient transportation of coal. They point to the federal eminent domain authority for gas pipelines and the emergency authority granted to oil pipelines during World War II.

First, natural gas is a much more difficult commodity to move by modes other than pipeline and since it is used in a significant number of homes in America, it should qualify for such a privilege. Furthermore, the transportation of oil during World War II could receive little argument that it was not in the national interest in the time of world war to grant federal eminent domain.

The proponents of the bill have not made a similar case for their coal slurry pipelines because the overriding national need is just not there. Coal is a vital national resource but it is being competitively and efficiently transported by truck, rail and barge. In fact, a recent CBO staff working paper showed that coal slurry pipelines were the least efficient, in terms of energy consumption, as compared to rail and barges. In fact, a recent CBO staff working paper showed that coal slurry pipelines were the least efficient, in terms of energy consumption, as compared to rail and barges. In regards to the war emergency, fortunately our nation does not at this time face such a problem.

3. LOSS OF PERMANANT JOBS

Authoritative estimates by the Appalachian Regional Commission and the Office of Technology Assessment (OTA) range from 12,000 to 40,000 jobs lost if this legislation is enacted into law. These jobs are permanent rail jobs that will be substituted to a great degree by temporary construction jobs. As of June 1982, nearly 50,000 railroad workers were unemployed receiving benefits in excess of $18 million.

A nearly doubling of railroad unemployment would put terrible strains on the already overburdened railroad retirement system. A December 1981 CBO study entitled "The Railroad Retirement System: Benefits and Financing" says:

> According to actuarial projections prepared by the Railroad Retirement Board, the RRS could face funding problems if, in 1984, employment fell below 450,000. . . . The RRS, however, remains subject to other forces that could reduce program revenues, including technological changes in the transportation industry, amendment to Social Security, labor disruptions and future decline in the demand for transporting coal.

Railroad employment is presently *454,000,* only 4,000 above the danger level.

4. NO REAL COMMON CARRIERS

The Interstate Commerce Act defines a motor contract carrier as a person holding itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes, or both.

This bill attempts to confer common carrier status on coal slurry pipelines by setting up a mechanism for the pipeline to hold itself out as a common carrier to two classes of shippers. The first class is the original supporters and the second class is individuals who on a first-come/first-served basis apply for any excess capacity. The second class of shippers will surely be second class because practical business sense dictates that no coal slurry promotor will even be able to effectuate financing if there is a hint of excess capacity. The original supporter will get his transportation which hardly places our "common carrier" pipeline in a position to hold itself out to anyone else in the general public. It is interesting to note that these "common carriers" will sign long-term capacity con-

tracts with no limitations. Under present regulations, railroads cannot commit their entire capacity of any type of equipment to contracts. In fact, a railroad can be found to have violated its common carrier obligation if as little as 40% of its capacity of some types of cars are tied up in contracts. The moral of the story is one better get in during the initial notice period or forget transportating your coal.

5. ADVERSE IMPACT ON SMALL COAL OPERATORS

We have been told that the coal industry is fully behind this legislation In the June 1982 issue of "The Coal Operator", it was stated that they had "not had one coal operator expressing support for the pipelines." They went on to say "We do not believe the coal slurry pipelines would be good for the entire coal industry."

The large coal producer located near the point of origin of a coal slurry pipeline and capable of producing large quantities of coal for use at the other end will prosper. The large operator will be able to make long-term commitments and obtain access to the pipeline from the start. The small operator on the other hand must rely on the spot market and send his smaller quantities of coal to it destination when needed. The small operator cannot enter long-term contracts under these conditions and will not be able to gain access to the pipelines after the contracts are signed. The small guy is going to be hurt severely by this bill.

6. ADVERSE IMPACT ON THE CONSUMER

The supporters of this measure contend that electricity consumers will benefit from these pipelines because cheaper coal transportation will benefit consumers and encourage energy development. In a memo from the Cabinet Council on National Resources and Environment to the President, our thoughts on the likely results are stated, "The Council of Economic Advisers, however, argues that transportation rates will not directly affect coal prices to users. They argue that coal will sell at the highest price possible, subject to competition from other fuels in the enduse markets. If transportation rates drop, it will simply increase the return to owners of coal mines."

In response to the charge that rail rates are too high and that the railroads are abusing their competitive position, we contend that those charges are unfounded.

The average rail coal rate today is less than 2.5 cents per ton-mile. This makes it lower than the average rate for such major rail commodities as pulpwood, grain, gravel, sand or iron ore.

Coal accounted for about 35 percent of the total tonnage moved by rail in 1980, but contributed only 18 percent of total revenues. If revenues are compared relative to tonnage, coal ranks 10th among the 12 principal commodity groups. Coal rates represent a smaller part of the delivered price of coal, on the average, than they did in 1970—27 percent today versus 35 percent in 1970. Railroads, as an industry, have a rate-of-return on investment of about 4.3 percent. The coal-hauling roads are among the most profitable of railroads—but the most profitable of these does not have a rate-of-return approaching the 11 percent the Interstate Commerce Com-

mission has found to be the minimum necessary to be fair to investors and shareholders.

This bill will benefit big business such as big coal, big utilities and big coal slurry pipelines companies. It will not benefit the consumer.

7. RAILROADS CAN HANDLE THE COAL

It has been charged by proponents of this legislation that the railroads do not have the capacity to handle future increased coal production.

The railroad industry hauls more than 60% of all coal produced in this country today, with the rest being divided among barges, trucks and mine-mouth generation. By comparison, rail coal traffic alone grew 24.5% between 1975 and 1980 and was handled without difficulty.

An information circular entitled "Long-Distance Coal Transport: Unit Trains or Slurry Pipelines," released by the U.S. Bureau of Mines in 1975, concluded that "The capacity of the railroads to cope with substantially more Western coal does not seem to be an unduly serious matter." A third report, prepared in April 1976 for the Department of Transportation and entitled "Rail Transportation Requirements for Coal Movement in 1980," involved a survey of a number of major railroads in each of the three regions in the United States. It predicted that increased coal traffic would help rather than hinder the movement of other commodities, noting that "the majority of the railroads are planning for projected total traffic, including anticipated increases in other commodities, on their system.

In early 1978, the Office of Technology Assessment (OTA), at the instruction of the Congress, conducted a study of all the issues surrounding the coal slurry pipeline controversy. On the question of capacity of more coal, the OTA said: "The capacity of rail systems can be expanded faster than can coal mining or electric power generation using coal, provided the necessary investments in local rail facilities are made."

Railroads and the carbuilding industry are responding to the increase in demands of the coal industry. 10,091 new and rebuilt open top hopper cars were installed in 1980, despite the recession. In the past four years, deliveries of open top hoppers have totaled 51,374, most of which were destined for coal service.

At the start of 1981, there was a backlog of more than 7,000 open top hopper cars—the predominant type used to haul coal—on order and undelivered to railroads. Total capacity of the hopper fleet has increased by 10% since 1974—due primarily to the fact that the new cars now being installed have an average capacity of about 100 tons compared with an average of 67 tons for those retired. Between 1970-80, when total coal tonnage moved via rail increased by 26%, there was an estimated 134% increase in coal tonnage moved by unit trains.

The facts support the statement that the railroads can handle future increases in coal production.

8. ADMINISTRATION OPPOSITION

Ronald Reagan in a memorandum dated November 16, 1981 stated that coal slurry pipelines "should be allowed to compete on their *own* merits as contributors to improving America's energy situation." He went on to say, "I recognize that there may be significant problems in right-of-way acquisition. However, this Administration will *not* support legislation which has been introduced in Congress to provide a federal right of eminent domain in override these difficulties."

The President went on to direct relucant federal agencies "to work with states and private parties to ensure that coal slurry pipelines are not prevented from competing by unjustified impediments to their ability to negotiate for rights-of-way. I believe this is the best resolution of a difficult question involving a conflict of the principle of federalism with the nation's need for competition in transportation."

There is no doubt that this legislation runs roughshod over the rights of the states to control their own destinies absent any significant federal interest.

SUMMARY

We believe this bill is simply a return of the same old issues that have been repeatedly rejected by Congress for the last decade. The basic flaws still remain from the water rights area to the potential burdens on the consumer. We believe that it is the responsibility and duty of the House Public Works and Transportation Committee to foster a balanced and competitive transportation system in this country. We should not award a competitive advantage to one mode to the detriment of another mode or modes. Therefore, we believe the House should reject this legislation and as that old saying goes, "If it isn't broke, don't fix it." The system works well now, a "fix it" could result in repercussions which this Committee is not now in a position to predict or comprehend.

BUD SHUSTER.
BOB EDGAR.
GENE SNYDER.
ARLAN STANGELAND.
GUY MOLINARI.
EUGENE ATKINSON.
NORMAN Y. MINETA.
JAMES L. OBERSTAR.
HENRY J. NOWAK.
MARILYN LLOYD BOUQUARD.
JOHN G. FARY.
BILLY LEE EVANS.
NICK JOE RAHALL II.
DOUGLAS APPLEGATE.
WILLIAM BONER.
WAYNE DOWDY.
BARBARA KENNELLY.
RAY KOGOVSEK.

ADDITIONAL MINORITY VIEWS OF HON. BOB EDGAR

The water rights provision contained in H.R. 4230 attempts to preserve the rights of individual states with regard to water use for coal pipelines. In view of the recent Supreme Court decision in *Sporhase* v. *Nebraska*, I view even this limited protection as inadequate; however, any protections of the rights of other, affected states are entirely absent from this legislation.

Clearly, the use of water from a river or aquifer serving several states affects all of the states involved, not just the individual state which might choose to sell water for a pipeline. The interdependence of states on specific water resources has been recognized throughout our history in the formation of interstate compacts and commissions. Unfortunately, not all states which share water resources have been able to agree to such compacts. Nor has the federal government been involved in the past in sanctioning large interbasin transfers of water as would be the case if we grant federal eminent domain authority to coal pipeline developers.

If we are to proceed with this type of legislation, we must protect the rights of all states affected by the diversion of water resources for pipeline use. The planned ETSI pipeline, for example, would divert water from the Missouri River over the objections of such downstream states as Iowa and Missouri. There is not any mechanism for the downstream states to become involved in the proposed diversion, while the state of South Dakota is the sole beneficiary of a sale of water for use in a pipeline originating in the state of Wyoming. Although the states may disagree about the significance of this one individual sale, one thing is clear—as a statement of national policy, H.R. 4230 threatens to rob downstream states of precious water resources in the decades to come.

I offered an amendment—defeated in subcommittee and full committee by narrow margins—which would protect the rights of downstream states and states sharing aquifers. The amendment is modeled on a bill introduced by Congressman Berk Bedell of Iowa. The amendment would simply guarantee that, in order for a coal pipeline development to take place, an interstate compact granting protection to all affected states would have to approve out-of-state transfers of water.

The July 2 decision of the Supreme Court in the *Sporhase* case could cause an upheaval in water policy at the state and federal level. I do not believe that it is wise to proceed with coal pipeline legislation until we have dealt with the fundamental issues raised by the *Sporhase* case. However, if we are to proceed with this legislation, it is our clear responsibility to set some policy guidelines with regard to water use. If we shirk this responsibility, I am convinced that we could witness chaotic developments in the use of our most precious natural resource. We must ensure that those states with strong laws and compacts in place are protected. And

before we involve the federal government in placing even greater demands on limited water resources, we must especially ensure that states without adequate protection are granted a federal guarantee of their basic rights to shared water resources.

BOB EDGAR.

ADDITIONAL MINORITY VIEWS OF HON. NORMAN Y. MINETA

In addition to the questions concerning States' rights that have recently been introduced by the Sporhase decision, there are other water and environmental issues that have not been mentioned in the minority views. One such issue is the massive use of water—a ton of water for every ton of coal shipped—which once used is gone forever.

While we are constantly warned about the severe water problems we will face, especially in the West, in the next few decades, no comprehensive plan has been put into place. Further actions, such as the coal slurry legislation, will only exacerbate the deteriorating water situation.

In addition to the fundamental question concerning this use of water, there are other environmental questions and technical difficulties with slurry pipelines that have not yet been solved. The substance that is produced once the coal has been extracted from the slurry is a black glue-like residue which lays in large pools at the end of the pipeline. The effect of this waste matter on the surrounding ground and ground water sources may also create a hazard.

While the technical difficulties with the process may someday be remedied, I believe it is an unwise policy to grant blanket approval to this process, and then go back to try to clean up the unwanted products.

NORMAN Y. MINETA.

DISSENTING REMARKS OF HON. ALLEN E. ERTEL

I voted against H.R. 4230 during full Public Works and Transportation Committee consideration of the bill. I am increasingly concerned about H.R. 4230's impact on consumers, the Appalachian coal mining industry and the railroad industry in general and Conrail in particular. In my opinion, coal slurry pipeline financing will not be available to the pipeline companies in the absence of a contractual commitment with utility users prior to the pipeline's construction. This "advance contract" arrangement means utilities would be locked into purchasing coal from the slurry pipelines *even if the pipelines prove not to be cost effective.* Under these circumstances, consumers would pay more for their electric power service and the railroads would suffer from a decline in freight volume. (Similarly, I voted against the Alaskan Gas Pipeline Waivers Act last December because gas companies would have been able to bill customers in advance for the construction of the proposed pipelines.)

The impact of coal slurry on Conrail certainly will be adverse. The Reagan Administration has put Conrail in a "become profitable now or else risk being sold piecemeal" situation. Facilitating the movement of Western coal to markets presently served by Appalachian coal through Conrail certainly will reduce Conrail's volume and chances of profitability. A breakup of the Conrail system, of course, would be a major blow to the Northeast's economy, in particular to the Northeast's ability to attract new industry and provide jobs.

And finally, I concur in the assessment of my colleagues who also voted against H.R. 4230, that if enacted this legislation will hurt small coal operators and cost the railroads 40,000 permanent jobs.

ALLEN E. ERTEL.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3, Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

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Subtitle IV—Interstate Commerce

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CHAPTER 103—INTERSTATE COMMERCE COMMISSION

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Subchapter II—Administrative

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§ 10322. Commission action and appellate procedure in non-rail proceedings

(a) This section applies to a matter before the Interstate Commerce Commission over which the Commission has jurisdiction under chapter 105 of this title, other than a matter involving a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of such chapter, or section 10934. The deadlines set forth in this section do not apply to the following sections of this subtitle: 10525(c), 10708(b), 10922(h)(2), 10928, 10934(c), *10952, 10954, 10955,* 11345a, and 11701(c).

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CHAPTER 109—LICENSING

Subchapter I—Railroads and Ferries

Sec.
10901. Authorizing construction and operation of railroad lines.
10902. Authorizing action to provide adequate, efficient, and safe facilities.
10903. Authorizing abandonment and discontinuance of railroad lines and rail transportation.
10904. Filing and procedure for applications to abandon or discontinue.
10905. Offers of financial assistance to avoid abandonment and discontinuance.
10906. Offering abandoned rail properties for sale for public purposes.
10907. Exceptions.
10908. Discontinuing or changing interstate train or ferry transportation subject to State law.

10909. Discontinuing or changing train or ferry transportation in one State.
10910. Railroad development.

Subchapter II—Other Carriers and Motor Carrier Brokers

10921. Requirement for certificate, permit, or license.
10922. Certificates of motor and water common carriers.
10923. Permits of motor and water contract carriers and freight forwarders.
10924. Licenses of motor carrier brokers.
10925. Effective periods of certificates, permits, and licenses.
10926. Transfers of certificates and permits.
10927. Security of motor carriers, brokers, and freight forwarders.
10928. Temporary authority for motor and water carriers.
10929. Temporary authority for previously exempt water transportation.
10930. Limitations on certificates and permits.
10931. Motor common carriers providing transportation entirely in one State.
10932. Motor carrier savings provisions.
10933. Authorizing abandonment of freight forwarder service.
10934. Household goods agents.

Subchapter III—Coal Pipeline Carriers

10951. Eminent domain authority.
10952. Certificate.
10953. Election of contract service.
10954. Coal pipeline carrier obligation.
10955. Contracts.
10956. Buy American—coal pipeline construction and maintenance.
10957. Certain additional uses of right-of-way.
10958. Underground construction.
10959. Definitions.

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Subchapter III—Coal Pipeline Carriers

§ 10951. Eminent domain authority

(a) Subject to the other provisions of this section, any person issued a certificate under section 10952 of this subchapter to construct a coal pipeline or extension thereof may acquire rights-of-way over, under, upon, or through private lands necessary to construct such pipeline or extension by exercise of the power of eminent domain in the United States district court for the district in which such lands are located or in the appropriate court of the State in which such lands are located. The practice and procedure in any action or proceeding to acquire a right-of-way under this section in a district court of the United States shall conform as nearly as may be practicable with the practice and procedure in a similar action or proceeding in the courts of the State where the property is situated.

(b) Nothing in this subchapter shall be construed to permit any person (including the Commission, any other official or employee of the United States, or any coal pipeline carrier) to acquire any right to take, use, or develop water through exercise of the power of eminent domain.

(c) No right-of-way may be acquired through exercise of the power of eminent domain under this section if such right-of-way is over, under, upon, or through—

(1) any land which is part of a historic site of National, State, or local significance as determined by the appropriate Federal, State, or local official; or

(2) any land designated as a wilderness area or wildlife and waterfowl refuge in accordance with applicable law by the duly constituted authority;

unless there is no feasible and prudent alternative to the acquisition of such right-of-way and reasonable planning is made to minimize harm to such site, area, or refuge resulting from construction, operation, and maintenance of the coal pipeline or extension thereof.

(d) No person may exercise the power of eminent domain under this section to acquire any right-of-way unless such person is unable to acquire the right-of-way by negotiation.

§ 10952. Certificate

(a) Any person seeking to construct, operate, maintain, or extend a coal pipeline may apply to the Commission for a certificate of public convenience and necessity under this section. Any person seeking to extend a coal pipeline with respect to which a certificate is issued under this section (including, but not limited to, an extension of a coal pipeline from a point in a State to another point in such State) and any person seeking to increase the capacity of a coal pipeline or extension with respect to which a certificate is issued under this section (including, but not limited to, construction of an additional coal pipeline or extension in the right-of-way through which the certificated pipeline or extension is constructed) shall apply to the Commission for a certificate of public convenience and necessity under this section.

(b)(1) Subject to subsections (d)(1), (e), and (g) of this section, if the Commission finds that—

(A) a person applying for authority to construct, operate, maintain, extend, or increase the capacity of a coal pipeline is fit, willing, and able—

(i) to construct, operate, and maintain the pipeline or extension; and

(ii) to comply with this subtitle and regulations of the Commission; and

(B) the pipeline or extension or increase in capacity is or will be required by the present or future public convenience and necessary;

the Commission may approve the application as filed or approve the application with such modifications (including, but not limited to, establishing a capacity for the pipeline or extension greater or less than the capacity proposed in the application) as the Commission finds necessary to protect the public interest. If the application is approved, the Commission may require compliance with such terms and conditions as the Commission finds necessary to protect the public interest.

(2) If the Commission fails to find the applicant fit, willing, and able, or to find public convenience and necessity, the Commission may deny the application.

(3) On approval of an application under this subsection, the Commission shall issue to the applicant a certificate (A) describing the construction, operation, maintenance, extension, or increase of capacity approved by the Commission, (B) specifying, at a minimum, the route approved for the coal pipeline or extension and any terms and conditions which the Commission requires under paragraph (1)

of this subsection with respect to such approval, and (C) establishing the capacity of the coal pipeline or extension.

(4) In making a determination under paragraph (1)(B) of this subsection, the Commission shall at a minimum consider—

(A) evidence of public support for issuance of the certificate;

(B) the effect of issuance of the certificate on existing carriers, except that a finding by the Commission that diversion of revenue or traffic from an existing carrier shall not be sufficient in and of itself to support a finding that issuance of the certificate is not required by the present or future public convenience and necessity; and

(C) the past record, written plan, and sufficiency of assurances that the applicant will make maximum use of minority employees and minority-owned enterprises in the construction, operation, maintenance, extension, or increase in the capacity of the coal pipeline.

(5) The requirement that persons issued certificates under this section be fit, willing, and able includes, among other things, financial fitness, operational fitness, and safety fitness.

(6) In determining the capacity of a coal pipeline or extension to be authorized under this section, the Commission shall consider—

(A) any contracts for the transportation of coal by such pipeline or extension entered into or proposed on or before the date the application for the certificate is filed under this section;

(B) any contracts for the transportation of coal which may be reasonably anticipated to be entered into after such date; and

(C) such other factors as may be relevant to such determination.

(c) An application for a certificate under this section must—

(1) be under oath;

(2) contain (A) a plan for construction, operation, maintenance, and location of the coal pipeline or extension thereof, (B) the proposed capacity of such pipeline or extension, (C) the size of the right-of-way necessary to construct, operate, and maintain such pipeline or extension, and (D) such other information as the Commission may require by regulation; and

(3) contain a certification by the applicant that a copy of the application has been served on the chief executive officer of each State through which the proposed pipeline or extension passes and on such other persons (including government officials) as the Commission may designate by regulation.

Notice of the filing of such application must be published in the Federal Register.

(d)(1) The Commission may not approve an application for a certificate under this section unless before the application is filed with the Commission—

(A) the applicant has a notice of intention to file the application published for at least four consecutive weeks in a newspaper of general circulation in each county through which the coal pipeline or extension thereof passes;

(B) the applicant sends a copy of such notice to the Commission and to the chief executive officer of each State through which the proposed pipeline or extension passes;

(C) the applicant takes such other steps as may be necessary to notify interested coal producers and coal users of the filing of such application; and

(D) at least 90 days have elapsed since the final publication of the notice required under subparagraph (A) of this paragraph.

Such notice shall, at a minimum, include the proposed location of such pipeline or extension and a general description of lands over, under, upon or through which such pipeline or extension will be constructed and indicate that any person who is interested in using such pipeline or extension to ship coal shall notify the applicant and the Commission of such interest.

(2) Any person interested in using a coal pipeline or extension thereof to ship coal may notify the Commission of such interest and specify the volume of coal which such person is interested in having transported by such pipeline or extension.

(3) Not later than 180 days after the effective date of this section, the Commission shall issue regulations to carry out this subsection (including, but not limited to, regulations establishing the form and content of the notice to be published under paragraph (1)(A) of this subsection and the notice to be filed under paragraph (2) of this subsection.

(e)(1) Not later than 10 days after any application for a certificate under this section is filed with the Commission, the Commission shall notify the Attorney General of the filing of such application and shall provide the Attorney General with a copy of such application and such other information as the Attorney General may request. The Attorney General shall conduct an antitrust review to determine the likely effects upon competition of approval of such application and, not later than 120 days after the date of receipt of such notification, shall advise the Commission of the results of such review, including, but not limited to, findings and recommendations concerning such terms and conditions as the Attorney General deems necessary to protect and promote competition. No application may be approved under this section if the Attorney General advises the Commission in writing that, on the basis of such review, approval of such application is not consistent with the antitrust laws.

(2) In paragraph (1) of this subsection—

(A) "antitrust laws" has the meaning such term has under the first section of the Clayton Act (15 U.S.C. 12); and

(B) "antitrust review" has the meaning the term "antitrust investigation" has under section 2 of the Antitrust Civil Process Act (15 U.S.C. 1311).

(f) The Commission, or a division thereof designated by the Commission, shall expedite hearings and proceedings concerning any application filed under this section and shall schedule all hearings, proposed findings and conclusions, exceptions, and any recommended decisions so that the Commission's final decision shall be issued and completed within eighteen months after the date of the filing of the application, except that the Commission may extend such eighteen-month period for a period of not more than ninety days.

(g) Each applicant for a certificate under this section shall reimburse the Commission for administrative and other costs incurred by the Commission in processing the application in such manner as the Commission shall, by rule, prescribe.

§ 10953. Election of contract service

In lieu of providing transportation by coal pipeline as a common carrier under this subtitle, any coal pipeline carrier may elect to provide all or any part of such transportation under contracts entered into with shippers of coal and approved under section 10955 of this subtitle. An election under this section must be submitted in writing to the Commission in such form and at such times as the Commission may require by regulation; except that in the case of a coal pipeline carrier who applies for a certificate under section 10952 of this subchapter and who elects under section 10953 of this subchapter, an election under this section to provide all or any part of the transportation to be authorized by such certificate must be submitted to the Commission before issuance of such certificate.

§ 10954. Coal pipeline carrier obligation

(a)(1) Any person who constructs, extends, or increases the capacity of a coal pipeline in accordance with a certificate issued under section 10952 of this subchapter and who elects under section 10953 of this subchapter to provide transportation by such pipeline under contracts shall provide for each original supporter of the certificate transportation of that volume of coal which the original supporter requested in the certification proceeding and for which a need is shown in such proceeding; except that in any case in which the capacity established for the coal pipeline or extension thereof under the certificate is less than the capacity necessary to transport the total volume of coal requested in the certification proceeding by all the original supporters of the certificate and for which a need is shown in such proceeding, the carrier shall provide for each original supporter of the certificate transportation of that volume of coal which the Commission determines is such original supporter's equitable share of the capacity established under the certificate.

(2)(A) During the one-year period beginning on the date of issuance of a certificate under section 10952 of this subchapter or during such longer period as the Commission may specify, but in no event longer than the two-year period beginning on such date, the carrier issued such certificate may enter under section 10955 of this subchapter into contracts with original supporters of such certificate to satisfy the obligation imposed on such carrier by this subsection. If, during such period, the carrier enters into a contract with an original supporter of such certificate and if the Commission approves such contract under section 10955 of this subchapter, the obligation imposed by this subsection on the carrier to such supporter shall be deemed to be met for purposes of this subsection. On request of such supporter, the carrier shall extend the coal pipeline to the facilities of such supporter for the purpose of providing transportation under such contract if such extension is technologically and economically feasible.

(B) Any original supporter of a certificate issued under section 10952 of this subchapter may waive, in writing, all or any part of any obligation imposed by this subsection with respect to such original supporter. To the extent an original supporter of a certificate waives under this paragraph the obligation imposed on the carrier by this subsection to transport coal for such supporter, the volume of

coal which the carrier is obligated to transport for such supporter under this subsection shall be reduced.

(3) Not later than the 150th day following the end of one-year period beginning on the date of issuance of a certificate under section 10952 of this subchapter or the end of such longer period as the Commission may specify, but in no event longer than the end of the two-year period beginning on such date, an original supporter of such certificate may file with the Commission a complaint under this section.

(4) If, on a complaint filed in accordance with paragraph (3) of this submission by an original supporter of a certificate, the Commission determines—

(A)(i), that, in the one-year period beginning on the date of issuance of such certificate or in such longer period as the Commission may specify, but in no event longer than two-year period beginning on such date, the carrier issued the certificate has not entered into a contract with such supporter under section 10955 of this subchapter to provide a transportation of coal; and

(ii) that such supporter was ready, willing, and able to enter into a contract with such carrier to provide transportation of the volume of coal such carrier is obligated to provide to such original supporter under this subsection; or

(B) that, in such period, such carrier has entered into such a contract and that such contract has not been approved under such section;

the Commission may order such carrier to provide for such supporter transportation of such volume of coal. In addition, if the Commission finds that extension of the coal pipeline to the facilities of the complainant is technologically and economically feasible, the Commission may order such carrier to extend the coal pipeline to such facilities. Rates and other terms and conditions for transportation ordered under this subsection shall be determined by the Commission, taking into account terms and conditions of any contracts which the carrier entered into with other orignial supporters of such certificate.

(b)(1) Any coal pipeline carrier who files under section 10955 of this subchapter a contract (other than a contract to which subsection (a)(2)(A) of this section applies) for transportation of a volume of coal less than the volume of coal which would totally obligate the capacity of the pipeline or extension thereof for providing transportation under contracts approved under such section and under orders issued by the Commission under this section shall, in the 60-day period beginning on the date of the filing of such contract or such longer period as the Commission may establish by regulation, enter into contracts with shippers (other than the shipper who entered into the filed contract) under terms and conditions similar to the terms and conditions contained in the contract filed by the carrier. The carrier shall enter into such similar contracts in the chronological order in which written offers to enter into such similar contracts are submitted to such carrier. The obligation imposed by this subsection shall remain in effect (A) until the capacity of the pipeline or extension is totally obligated for providing transportation under contracts approved under such section and under orders of the Commission under this section, or (B) until the end of such period, whichever occurs first.

mission under this section, or (B) until the end of such period, whichever occurs first.

(2) Not later than the 30th day following the end of such period, a shipper of coal may file a complaint with the Commission on the grounds that the carrier is violating this subsection.

(3) If, after notice and an opportunity for a proceeding under section 10322 of this subchapter but not later than the 90th day following the filing of a complaint in accordance with paragraph (2) of this subsection, the Commission finds that the carrier is violating this subsection and has with respect to the complaining shipper an obligation under this subsection to enter into a contract, the Commission shall order the carrier to provide the service specified in the offer under such terms and conditions as the Commission may determine taking into account the terms and conditions contained in such offer. In addition, if the Commission finds that the carrier, in entering into contracts with shippers of coal pursuant to paragraph (1) of this subsection, violates this subsection by entering into such contracts in a chronological order other than the order in which the offers are submitted to the carrier, the Commission shall not approve under section 10955 of this subchapter those contracts entered into in improper order and may take such other action as may be necessary pursuant to subsection (g) of such section to carry out this subsection.

(4) The Commission may require, by regulation, coal pipeline carriers to submit such information at such times and in such form as the Commission determines is necessary to carry out the objectives of this subsection.

§ 10955. Contracts

(a) Subject to the provisions of this section and section 10954 of this subchapter, any coal pipeline carrier who elects under section 10953 of this subchapter to provide all or any part of the transportation of coal which such carrier provides by pipeline may enter into a contract with any shipper of coal to provide transportation of coal under such rates and conditions as the contract may specify.

(b) Each contract entered into under this section or section 10954 of this subchapter shall be filed with the Commission. The Commission shall publish special tariff rules for contracts filed under this section in order to assure that the essential terms of such contracts are available to the general public in tariff format.

(c)(1) Before a contract filed under this section or section 10954 of this subchapter may become effective, such contract shall be approved by the Commission under this section.

(2) No later than 30 days after the date of filing of a contract under this section, the Commission may, on its own initiative or on complaint, begin a proceeding to review such contract.

(3) Within 120 days after the date a proceeding is commenced under paragraph (2) of this subsection, or within such shorter time period after such date as the Commission may establish, the Commission shall approve or disapprove the contract which is the subject of such proceeding in accordance with the provisions of this section.

(d) The Commission may not approve under this section any contract for the transportation of coal by pipeline—

(1) if approval of such contract will result in the total tonnage of coal obligated to be transported by the pipeline in any period under contracts approved under this section and under orders issued by the Commission under section 10954 of this subchapter exceeding the maximum capacity of the pipeline in such period; or

(2) if such contract constitutes a destructive competitive practice.

(e) The Commission may not approve under this section any contract for the transportation of coal by a pipeline with respect to which a certificate is issued under section 10952 of this subchapter if such contract violates any term or condition imposed by the Commission with respect to such certificate.

(f) The Commission may not approve under this section any contract for the transportation of coal by a pipeline thereof with respect to which a certificate is issued under section 10952 of this subchapter unless the Commission is satisfied that the pipeline has sufficient capacity available to provide the service specified in the contract and to meet the obligation, if any, imposed by section 10954(a) of this subchapter on such carrier to provide service for the original supporters of such certificate.

(g) Any contract for transportation of coal by pipeline approved under this section shall contain a provision which allows the coal pipeline carrier to interrupt or discontinue service under such contract to provide such service as the Commission may order under section 10954 of this subchapter.

(h) Approval of a contract filed under this section shall be effective on the date the Commission approves such contract but in no event before the end of the 30-day period beginning on the date such contract is filed.

(i)(1) The Commission may not require a coal pipeline carrier to violate the terms of a contract filed under this section except to the extent necessary to comply with section 10954 or 11128 of this subtitle.

(2) Except as provided under section 10954 of this subchapter, a coal pipeline carrier shall not have the right or obligation to interrupt service under a contract approved under this section for the purpose of prorating pipeline service to other shippers unless the terms of the contract provide otherwise.

(j)(1) The provisions of chapter 107 of this subtitle shall not apply to any contract approved under this section.

(2) Notwithstanding the provisions of section 10102(4) of this subtitle, a coal pipeline carrier providing transportation of coal by pipeline under a contract approved under this section shall not while providing such transportation be a common carrier for purposes of this subtitle.

(k) Any modification of a contract approved under this section shall be filed by the carrier with the Commission under this section and shall be subject to the provisions of this section in the same manner and to the same extent as any contract filed under this section.

§ 10956. Buy American—coal pipeline construction and maintenance

(a) Except as provided in subsection (b) of this section, all articles, materials, and supplies used in the construction and maintenance of a coal pipeline for which a certificate is issued under section 10952 shall have been manufactured in the United States substantially all from articles, materials, and supplies mined, produced, or manufactured, as the case may be, in the United States.

(b) The Commission may, upon application of a person holding a certificate under section 10952, exempt such person from the requirements of subsection (a) of this section with respect to the purchase of particular articles, materials, or supplies, if the Commission determines that—

(1) the cost of imposing such requirements with respect to such articles, materials, or supplies is unreasonable; or

(2) such articles, materials, or supplies, or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(c) The provisions of this subsection shall not apply—

(1) in any case in which the cost of the articles, materials, or supplies purchased is less than $100,000; or

(2) in the case of articles, materials, or supplies purchased pursuant to a contract entered into before the date of enactment of this section.

(d) For purposes of this section, the term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 10957. Certain additional uses of right-of-way

Nothing in this subchapter shall prevent any person or governmental entity from using the power of eminent domain under Federal or State law to acquire the right to cross or otherwise use any portion of a right-of-way acquired in whole or part under this subchapter in any case in which the crossing or use of such right-of-way by such person or entity is consistent with and does not interfere with the operation and maintenance of the coal pipeline.

§10958. Underground construction

The line pipe of each coal pipeline and extension thereof with respect to which a certificate is issued under section 10952 of this subchapter shall to the maximum extent practicable, consistent with environmental protection, safety, and good engineering and technological practices, be located underground.

§10959. Definitions

In this subchapter—

(1) "coal" means any of the recognized classifications of coal, including anthracite, bituminous, semibituminous, subbituminous, and lignite.

(2) "coal pipeline" means any pipeline system for the transportation of coal (whether in a liquid or solid state and whether alone or mixed with other substances) which is or will be

constructed from a point in a State to a point in another State or from a point in a State to another point in such State through another State. A coal pipeline includes the line pipe, valves, pumping stations, coal collection lines or systems, and similar equipment or facilities used or useful in the transportation of coal.

(3) "coal pipeline carrier" means a person providing or seeking to provide transportation of coal by pipeline subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this subtitle.

(4) "original supporter," as used with respect to a certificate issued under section 10952 of this subchapter, means a shipper of coal who is identifed in the application for such certificate as a supporter of such application or who, before such application is filed with the Commission, notifies the Commission of his interest in using the coal pipeline or extension thereof authorized by such certificate and who supports approval of such application in the certification proceeding.

(5) "private lands" means any interest in any land other than interests (A) owned by the United States or owned by any State or any political subdivision thereof; (B) held in trust by the United States for an Indian or Indian tribe or owned by an Indian or Indian tribe subject to a restraint against alienation imposed by the United States; or (C) owned by a regional or village corporation established under the Alaska Native Claims Settlement Act, as amended, if such land was transferred to such corporation pursuant to such Act.

(6) "right-of-way" means such interest in land, including an ownership (fee simple) interest, as may be necessary for a coal pipeline.

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CHAPTER 117—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

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§ 11702. Enforcement by the Interstate Commerce Commission

(a) The Interstate Commerce Commission may bring a civil action—

(1) to enjoin a rail carrier from violating section 10901–10907 or 10933 of this title, or a regulation prescribed or certificate issued under any of those sections;

(2) to enforce section 10527 or 10930 or 11109 or 11323 of this title, or subchapter III of chapter 113 of this title and to compel compliance with the order of the Commission under any of those sections and that subchapter;

(3) to enforce an order of the Commission, except a civil action to enforce an order for the payment of money, when it is violated by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title;

(4) to enforce this subtitle (except a civil action under a provision of this subtitle governing the reasonableness and discrimi-

natory character of rates), or a regulation or order of the Commission or a certificate or permit issued under this subtitle when violated by a motor carrier or broker providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title;

(5) to enforce this subtitle (except a civil action under a provision of this subtitle governing the reasonableness and discriminatory character of rates), or a regulation or order of the Commission or a certificate or permit issued under this sub-title, except a civil action to enforce an order for the payment of money, when violated by a carrier providing transportation subject to the jurisdiction of the Commission under subchapter III of chapter 105 of this title; **[***and***]**

*(6) to enforce this subtitle, or a regulation or order of the Commission or permit issued under this subtitle when violated by a carrier providing service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title***].]***; and*

(7) to enforce this subtitle or a regulation or order of the Commission or a certificate issued under this subtitle when violated by a coal pipeline carrier who holds a certificate issued under section 10952 of this subchapter.

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